

Minutes of: Dec. 8, 2021
Date Approved: __Mar. 9, 2022__
Date Filed/Village Clerk:

December 8, 2021

TUCKAHOE ZONING BOARD AND BOARD OF APPEALS

Village Hall – 7:30pm

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| Present: | Tom Ringwald | Chairperson |
| | David Scalzo | Member |
| | Nathan Jackman | Member |
| | Anthony Fiore Jr. | Member |

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| Absent: | Christina Brown | Member |
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Also in Attendance:

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| Bill Williams | Building Inspector |
| Mike Seminara | Assistant Building Inspector |
| Gary Gjertsen | Village Attorney |
| Carolina Fonseca | Village Consultant |
| Noah Levine | Village Consultant – BFJ Planning |

Chairman Ringwald announced the agenda as follows:

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| Item #1 | Approval of minutes from the November 10, 2021 |
| | Regular Meeting |
| Item #2 | 41 Armourvilla Avenue Return |
| Item #3 | 377 Marbledale Rd. Return |
| Item #4 | 69 Main St. Adjourned |
| Item #5 | 22 Underhill St. Adjourned |

**Item #1 Approval of minutes from the November 10, 2021
Regular Meeting**

Member Fiore motioned to approve the Regular Meeting minutes dated November 10, 2021, seconded by Member Jackman and upon roll call was carried with a vote of 4 – 0.

Item #2 41 Armourvilla Avenue Site Plan

Mrs. Arlene Love, applicant stated that there were no changes made to the submitted plans. She added that the curb cut approval was granted by the DPW.

Gary Gjertsen, Village Attorney confirmed that the Building Dept. has the approval for the curb cut.

Chairman Ringwald noted that the public hearing was still open.

No Public Comments

Chairman Ringwald motioned to close the public hearing, seconded by Member Fiore and carried unanimously.

Chairman Ringwald offered the following SEQRA resolution in the form of a Motion:

**The application for AREA VARIANCES requested by _Alfred Love and Arlene Love____
whose address is 41 Armour Villa Ave, Tuckahoe, NY Sec._26_Blk 2
Lot__40____
for relief from the following sections of the zoning code: ____5-1.2 Off Street**

Parking

SEQRA RESOLUTION

Based on this application as submitted, this Zoning Board of Appeals finds and determines that:

1. The action taken herein is an Unlisted Action subject to the requirements of SEQRA and its implementing regulations.
2. This Zoning Board of Appeals is in possession of all information reasonably necessary to make the determination as to the environmental significance of the proposed area variance application.
3. That the action taken herein shall not have a significant adverse impact on the environment and it is declared that a Negative Declaration is hereby adopted with regard to this action.

Member Fiore seconded the motion and upon roll call was carried with a vote of 4 – 0.

Chairman Ringwald offered the following resolution in the form of a motion:

Applicants, Alfred Love and Arlene Love, are seeking to expand a one car driveway to a two car driveway at the premises located at 41 Armour Villa Avenue in Tuckahoe. The Zoning Code Section 5-1.2 does not allow for parking Spaces to be in the front yard, thus the applicants are seeking relief from this section so as to allow for the parking of the 2 cars on the side of the front yard. This request is not typically granted by this Board as the intention of the section is to maintain green space, however, based on the location of this property being in an area that has substantial off street parking problems and the location of the proposed spaces being on the side of the front yard, we find that the relief sought not only benefits the applicant, but the entire neighborhood. It is important to note that the curb cut to accommodate the extra space has been approved by Tuckahoe's Department of Public Works subject to this Board's approval and that the proposed curb cut will not eliminate any off street parking spaces.

Therefore, recommendation is for the area variances to be granted as the benefit to the applicant of the area variance outweighs the detriment to health, safety and the welfare of the neighborhood. The applicant has demonstrated through its submissions and presentation that it has met all aspects of the 5 prong test to the satisfaction of this board.

The granting of the variance(s) herein is granted on the condition that work under such variance be commenced and diligently prosecuted within one year of the granting thereof, failing which such variance(s) shall become null and void.

Member Fiore seconded the motion and upon roll call was carried with a vote of 4 – 0.

Item #3 377 Marbledale Rd. Return

Chairman Ringwald noted that the public hearing regarding the creation of a new lot has been closed.

Member Scalzo offered the following resolution in the form of a motion:

(see attached)

Member Fiore seconded the motion and upon roll call was carried with a vote of 4 – 0.

Member Scalzo offered the following comments: he interprets this application as a creation of a new lot with the plans to demolish the house on the property. The Planning Board has a responsibility to oversee and review the plans and offer their expertise. The topography of this area is a concern as it has a steep slope, rocky property and flooding issues. Member Scalzo noted that he agrees with Bill William's interpretation of the code.

Chairman Ringwald and Member Fiore stated that they agree with the statements made by Member Scalzo.

Max Mahalek, attorney for the applicant, reminded the Board that the public hearing was closed only for the creation of the new lot, not for the entire application.

Gary Gjertsen agreed that only this portion of the application was closed to the public for comment. The applicant has recently submitted a newly revised application. The Board members have not reviewed the plans yet. The applicant will like to say a few words regarding the new and original applications. The Board will allow the applicant to speak, but will not respond tonight. The Board needs sufficient time to review the submitted plans.

Jonathon Giahn, applicant and owner of the property, noted that this application would have been beneficial to the neighbors and community but it was his feeling that the Village immediately opposed the project. There are pros and cons for each scenario. He noted that he planned on building beautiful homes.

The amended plans now require a height variance of 5ft. The plans are such to match the heights of the nearby houses. He plans to create aesthetically pleasing homes. He could easily build a house with a flat roof, but that would not match the surrounding houses.

Mr. Giahn continued that there was much confusion with the application. The concerns discussed were that it was going to be detrimental to the area, parking congestion and water runoff. He added that this original plan was the most beneficial use of the land. A larger house will potentially have a lower price per square foot. This will then lower the value of the surrounding homes. There is a house 389 Marbledale Rd. that is 3000 sq. ft. sitting on the market for 2 years for 1.1 million. Also 267 Dante Ave was on the market for 1.2 million and with no buyers, it is now a rental property. A rental property is not favorable to the community. These houses that were designed would have been approximately \$360 per sq. ft. This would have actually raised the value of the nearby homes. Unfortunately, the alternative would be two smaller houses would not offset the construction costs and would not be enough revenue.

Mr. Giahn noted that he did not write the laws. He was only discussing the 'as of right' design. He added that he did not submit petitions for the application as he felt that petitions actually polarize the community. The decision should be based on fact and not opinion.

He added that the neighbors right next door to this property were not present to oppose the application. He concluded that the original proposal would have been the best use of the property.

Chairman Ringwald announced that Member Scalzo would be stepping down as a member of this Board as he and his family are moving south. The Board thanked Member Scalzo for a decade of service to this Village. He will be sorely missed. Member Scalzo thanked the Board members for giving so much effort to every application. He enjoyed his time on this Board immensely.

Chairman Ringwald wished all the residents a Happy Holiday and a Happy New Year!!

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| Item #4 | 69 Main St. | Adjourned |
| Item #5 | 22 Underhill St. | Adjourned |

There being no further comments from the public or business before the Board, upon motion duly made, seconded and unanimously carried, the meeting was adjourned.

VILLAGE OF TUCKAHOE

65 Main Street
Tuckahoe, NY 10707

Zoning Board of Appeals DECISION

APPLICANT/OWNER: Jonathan Giahn

LOCATION OF PROJECT: 377 Marbledale Road

SECTION: 46 BLOCK: 1 LOTS 12,13 & 15

The applicant, Jonathan Giahn, is seeking an interpretation from the decision, dated March 18, 2021, of the Village of Tuckahoe's Building Inspector, Mr. William Williams. The issue that is currently before this Board is whether the relocation of a tax map line to create 2 buildable lots where only 1 presently exists is the creation of new lots and therefore must comply with the 1999 Tuckahoe Village Zoning Code requirements.

Applicant, Jonathan Giahn, currently owns a buildable lot on Marbledale Road that consists of 3 tax map parcels, Parcels 12, 13 and 15. The way the lot is now configured only one home can be built on the lot. Applicant is seeking to relocate the tax map lines to create two buildable lots, where he proposes to build two new homes. The Village of Tuckahoe's Building Inspector has determined by relocating the tax map lines and creating two new buildable lots the applicant must then comply with the requirements of the Tuckahoe Village Zoning Code that applies to lots created after 1999. The applicant has appealed this determination and the question of whether the relocating of tax map lines to create additional buildable lots are newly created lots.

We, must first look at the definition of what a Lot is pursuant to the Tuckahoe Village Zoning Code. The definition of a lot is found in Section 3-1.1.18 of the Tuckahoe Village Zoning Code. The section reads as follows:

LOT — Any parcel of land, not necessarily coincident with a lot or lots shown on a map of record, which is occupied or which is to be occupied by a building and its accessory buildings, if any, or by a group of buildings having any land in common and the buildings accessory thereto, if any, together with the required open spaces appurtenant to such building or group of buildings.

The Definition is clear that a Lot is parcel of land that is occupied or to be occupied by a building, regardless of the map designations. Here the applicant currently has one Lot that he can build one home on. He is seeking to redraw the tax map lines so that he creates two Lots that he then can put two homes on. Applicant is clearly creating two new Lots with the relocation of the tax map line, which fits squarely with

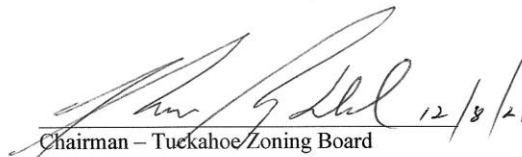
the Village of Tuckahoe's definition of a Lot. We do not see the ambiguity in the plain language of the definition and a plain reading of this definition is exactly in line with the Building Inspector's determination that the applicant would be creating 2 new Lots and therefore must comply with the post 1999 Village Code.

During this process and at the hearing on the interpretation we heard from the Village Building Inspector, Mr. William Williams. Mr. Williams has been the Building Inspector for the Village of Tuckahoe for over 20 years and was the Building Inspector at time of the 1999 amendments to the Zoning Code. Mr. Williams was unequivocal in that this has been the Village's position on the creation of Lots since 1999 and he has been consistent with his interpretation of the creations of new lots since 1999.

In furtherance of this interpretation we are in complete agreement with the Village of Tuckahoe's Planner, Noah Levine from BFJ Planning. In support of the Building Inspector's position Mr. Levine crafted a memorandum to this Board dated June 9, 2021. In said memorandum, Mr. Levine points out the 1999 Amendments to the Zoning Code was primarily to limit the density in the Village. The updated regulations passed by the Board of Trustees in 1999 responded to an uptick in subdivisions, and the need for standards to prevent overcrowding and maintain green space between homes. The revised standards included an increase in minimum lot width, minimum lot size, and setbacks from property lines, among other changes.

Therefore, based on the clear language of the definition of Lot and hearing both the Village's Building Inspector and Planner we find that the Building Inspector is correct in his interpretation that by the applicant seeking to redraw the tax map lines he would be creating two new Lots and he would then need to comply with the post 1999 Zoning code requirements.

Dated: December 8, 2021


Chairman – Tuckahoe Zoning Board 12/8/21